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Cases, Regulations and Statutes

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Example: returning to the above example, of $220,000 of machinery loans secured by a mortgage on land owned jointly by husband and wife, only $110,00 would be deductible as a mortgage on the jointly owned land. However, the other $110,000 should be deductible as a claim against the estate *if the decedent was personally liable on the obligation.* Thus, if the husband's name appears on the note, the other half of the note balance should be deductible as a claim against the estate. Of course, had the obligation been secured by the machinery items, the entire amount would have been deductible in the husband's estate assuming the machinery was in the husband's name.

In conclusion

The obvious lesson from all of this is that it is important how obligations are structured if a deduction for federal estate tax purposes is desired. To obtain a full deduction, the safest approach is to secure obligations by assets owned by the individual for whom the deduction is anticipated.

FOOTNOTES

1 See generally 5 Harl, *Agricultural Law* § 43.02[2][b] (1995); Harl, *Agricultural Law Manual* § 5.02[1] (1995). See also Harl "Taxing Joint Tenancy Property", 3 *Agric. L. Dig*. 181 (1992).

2 I.R.C. § 2040(b).

3 *Id*.

4 I.R.C. § 2040(a). See Estate of Stimson v. Comm'r, T.C. Memo. 1992-242 (balance in joint bank accounts included in gross estate even though daughter's names on account for convenience in managing financial affairs); Estate of Hicks v. Comm'r, T.C. Memo. 1977-215 (father-son stock margin account).

5 I.R.C. § 2040(a).

6 I.R.C. § 2040(d).

7 I.R.C. § 2515.

8 I.R.C. § 2040(b).

9 I.R.C. § 2053(a)(4). See Treas. Reg. § 20.2053-7.

10 Treas. Reg. § 20.2053-7. See Estate of Theis v. Comm'r, 81 T.C. 741 (1983), *aff'd*, 770 F.2d 981 (11th Cir. 1985) (property included in gross estate because of retained life estate but mortgage placed on property not deductible; decedent not personally liable and had signed only as accommodation with mortgage proceeds going to holder of remainder interest (children)); Rev. Rul. 84-42, 1984-1 C.B. 194 (property in which decedent retained life estate includible in gross estate with no deduction for mortgage placed on property by holder of remainder interest even though decedent was guarantor).

11 Rev. Rul. 79-302, 1979-2 C.B. 328; Rev. Rul. 81-183, 1981-2 C.B. 180; Rev. Rul. 81-184, 1981-2 C.B. 181.

12 Estate of Fawcett v. Comm'r, 64 T.C. 889 (1975) (ranch property); Estate of Seagrist v. Comm'r, 42 B.T.A. 1159 (1940).

13 I.R.C.§ 2053(a)(3); Treas. Reg. § 20.2053-1(a)(1)(iii).

14 Treas. Reg. § 20.2053-4.

15 *Id*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

POSSESSION. When the plaintiff purchased the disputed property, a fence separated the plaintiff's land from the neighbors' land and the plaintiff believed that the fence was the actual boundary. The plaintiff used the land for pasturing cattle and the cattle did roam over the land up to the fence. The plaintiff and the defendant's predecessor in interest both contributed to the maintenance of the fence and the fence was treated as the boundary. After the defendant purchased the neighboring land, a survey indicated that the true boundary was inside the land occupied by the plaintiff. The plaintiff claimed ownership of the disputed strip by adverse possession for over 10 years. The defendant argued, and the trial court ruled, that the plaintiff's possession was not sufficiently open because the defendant, or the predecessor in interest, could not see the cattle on the disputed strip when the defendant was in the defendant's house. The appellate court reversed, holding that the plaintiff had already obtained title to the land by adverse possession by the time the defendant acquired the neighboring property and that the pasturing of cattle was sufficient open and notorious use to constitute adverse possession. **Davis v. Parke, 898 P.2d 804 (Or. Ct. App. 1995)**.

ANIMALS

CATTLE. The plaintiff was the wife of the son of the defendant who owned and operated a farm and ranch. The plaintiff was injured while helping the defendant, the plaintiff's husband, and the defendant's other son herd stock cattle to a new pasture. The plaintiff was inexperienced at moving cattle and was trampled by a stray cow while attempting to move the cow to the pasture. The plaintiff sued for negligence in keeping, harboring and transporting the cow and in failing to warn and instruct the plaintiff about handling stock cows. The defendant argued that the plaintiff failed to prove that the defendant knew that the cow had any dangerous propensities. The court held that such proof was not required in an action for negligence and that the trial court had sufficient evidence to find negligence in this case. **Sybesma v. Sybesma, 534 N.W.2d 355 (S.D. 1995)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS

HOMESTEAD. Within two months before filing for bankruptcy, the debtor conveyed the homestead to the debtor's son for "love and affection" at a time when the debtor was insolvent and the debtor had $27,000 of equity in the house. The debtor did not list the house on the bankruptcy property schedules or claim the homestead as exempt. The trustee learned about the transfer and told the debtor to list any interest in the house. Three days later the son conveyed the house back to the debtor for "love and affection." The debtor then claimed a homestead exemption for the house. The trustee sought denial of the exemption because the property was recovered by the trustee and the property had been fraudulently conveyed by the debtor. The debtor argued that the property was not "recovered by the trustee" because the trustee had not filed any formal motion to recover the house. The court held that the debtor's homestead exemption would be denied because the conveyance of the house to the son was a voidable preferential transfer and was recovered by the estate through the trustee's actions. ***In re* Glass, 60 F.3d 565 (9th Cir. 1995), *aff'g*, 164 B.R. 759 (Bankr. 9th Cir. 1994)**.

CHAPTER 13-*ALM* § 13.03.*

DISPOSABLE INCOME. The debtor claimed monthly social security disability payments of $900 as exempt and excluded the payments from the disposable income available to fund the Chapter 13 plan, which provided only 3 percent payment of unsecured claims. The exemption was allowed but the trustee argued that the payments should have been included in disposable income. Citing *In re Schnabel, 153 B.R. 809 (Bankr. N.D. Ill. 1993)* and *In re Morse, 164 B.R. 651 (Bankr. E.D. Wash. 1994)*, the court held that the disability payments must be included in determining disposable income during the plan. ***In re* Hagel, 184 B.R. 793 (Bankr. 9th Cir. 1995), *aff'g*, 171 B.R. 686 (Bankr. D. Mont. 1994)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

CLAIMS. The IRS had filed secured and unsecured claims for taxes two days after the bar date for filing claims, even though the IRS had received proper notice of the bar date. The IRS offered no excuse for the late filing and argued that Section 502 did not provide for disallowance of untimely filed claims. The court held that the untimely filed claims were barred as untimely filed. ***In re* Marsiat, 184 B.R. 846 (Bankr. M.D. Fla. 1994)**.

DISCHARGE. The debtors had filed four previous bankruptcy cases which were dismissed because of the debtors' failure to complete in a timely manner the bankruptcy requirements. The debtors sought a determination that tax claims for periods more than three years before the current bankruptcy filing were dischargeable. The IRS argued that the three year period of Sections 507(a)(7)(A)(i) and 523(a)(1)(A) should be equitably tolled by the previous bankruptcy filings. The debtors argued that the previous filings were not tax motivated and were made to prevent foreclosure against the homestead. The court held that the tax claims were not dischargeable because the three year period for priority tax claims was equitably tolled since the previous filings occurred soon after tax notices were sent, the debtors had funds to pay the taxes, and the IRS made tax collection attempts during the times between the filings. ***In re* Clark, 184 B.R. 728 (Bankr. N.D. Tex. 1995)**.

CONTRACTS

STATUTE OF FRAUDS. The plaintiff was a seller of wholesale farm equipment and had sold a "rolling basket crumbler" to the defendant retailer of farm equipment. The original sales contract required payment within one month of delivery. The defendant alleged that the plaintiff's agent had orally represented that the defendant would not have to pay for the crumbler if the equipment did not sell and that the plaintiff would accept return of the crumbler in lieu of payment. The court held that the evidence of the oral modification of the written sales agreement would not be allowed because the oral agreement contradicted the payment terms in the written contract. When the crumbler was delivered, the defendant discovered that it would not fit on a particular cultivator. The defendant notified the plaintiff and the plaintiff made modifications which adapted the crumbler to fit the cultivator. Because the modifications took some time, the plaintiff had agreed in writing to extend the payment date to one year later or upon sale. The defendant argued that the failure of the crumbler to fit the cultivator was a breach of implied warranty. The court held that the evidence demonstrated that the defendant had not timely sought rejection and return of the equipment as not complying with the contract. Instead, the defendant had accepted the modifications and new payment terms and was obligated to pay for the crumbler as agreed in the written contracts. **Whelchel Co. v. Ripley Tractor Co., 900 S.W.2d 691 (Tenn. App. 1995)**.

The plaintiff operated a turkey farm and had contracted with the defendant to raise turkeys which would be purchased by the defendant, raised by the plaintiff and shipped to the defendant's processing plants. The plaintiff sued for breach of contract when the defendant stopped providing turkeys. The plaintiff alleged that the parties orally agreed to continue the arrangement so long as the plaintiff performed satisfactorily. The defendant argued that the oral modification of the written contract was not enforceable because the oral terms would not be performed within a year. The court held that the oral modification terms created a contract terminable at will; therefore, the statute of frauds did not apply. However, the court held that the term of the oral contract was for a reasonable period in order for the plaintiff to recover its initial investment in equipment. The court also held that the integration clause in the written contract did not prevent consideration of oral modifications because the written contract omitted several aspects of the arrangement, indicating that the parties did not consider the written contract to cover all aspects of the arrangement. **Center State Farms v. Campbell Soup Co., 58 F.3d 1030 (4th Cir. 1995)**.

USURY. The debtor was a grain broker who purchased crops from farmers over several years on a "forward contract" basis. Under the contracts, the debtor paid "premiums" for the periods during which amounts due under the contracts were not paid. The court described the arrangements as investment accounts under which the "premiums" were actually interest on the amounts left with the debtor. After the debtor filed for bankruptcy, the bankruptcy trustee sought to void the amounts due under the contracts, arguing that the contracts were usurious under Minn. Stat. § 334.021. The farmers argued that the premiums on the deferred payment contracts were not usurious because the contracts were supposed to be with the grain companies who purchased the grain from the debtor and there was no intent to evade the usury law at the inception of the contracts. The farmers also argued that the law did not apply because the contract amounts exceeded $100,000. The court rejected the last argument because the contracts exceeded $100,000 only if the alleged usurious interest were included. The court held that an issue of fact remained as to whether the contracts were with the debtor or the grain companies. However, the court held that if the contracts were with the debtor, the contracts were usurious because the law required only an intentional using of an usurious rate, whether or not the parties knew the rate was usurious. The court held that if the contracts were determined to be usurious, the trustee would be allowed to avoid the contracts and collect from the farmers double the interest charged. ***In re* Donnay, 184 B.R. 767 (Bankr. D. Minn. 1995)**.

CORPORATIONS

SHAREHOLDER SUIT. The plaintiff was a minority shareholder in a closely held family corporation which operated an electrical supply company. The plaintiff brought suit against the majority shareholder for breach of corporate fiduciary duties, alleging that the majority shareholder was attempting to "freeze" the plaintiff out of the plaintiff's interest in the corporation by paying excess salaries to other shareholders and family member employees, substantially reducing dividend payments, firing the plaintiff from employment with the company, withholding corporate records from the plaintiff and barring the plaintiff from the corporate premises. The defendant argued that the plaintiff was required to bring a shareholder's derivative action on a claim for breach of corporate fiduciary duty. The court acknowledged that generally a shareholder was required to bring a derivative action but the court held that an exception applied where none of the reasons underlying the purposes of the derivative action rule was present; therefore, a shareholder in a three shareholder corproation could bring an action in the shareholder's own name against the corporation and other shareholders. The court noted that there was no danger of "multitudinous litigation" by separate shareholders since there was only one other shareholder. **Barth v. Barth, 651 N.E.2d 291 (Ind. Ct. App. 1995)**.

FEDERAL AGRICULTURAL PROGRAMS

DISASTER PAYMENTS. The CFSA has adopted as final regulations establishing the Disaster Set Aside program for CFSA borrowers who operated a farm or ranch in a federally declared disaster area in 1993. Under the program, a distressed borrower may move the next scheduled loan payment to the end of the loan term. **60 Fed. Reg. 46753 (Sept. 8, 1995)**.

The appellant applied for a 1990 disaster payment based on double-cropped squash acreage and the disaster benefits were approved by the county committee. More than 90 days after the acreage was certified by the appellant, an audit was conducted by the state committee which concluded that the double-cropped squash acreage did not meet the disaster program requirements because no history of double-cropping was shown. The appellant attempted to obtain the county files for 1986, 1988 and 1989 but the county office no longer had the files because the files were routinely destroyed after five years. However, the records did show approval for double-cropped disaster benefits for 1988. The state determination was appealed to the National Appeals Division of DASCO and was upheld, again based on the failure of the appellant to show double-cropping history. However, NAD found that the appellant did not provide any false statements or misrepresentations in the application for the 1990 disaster benefits. On further appeal to the Director of NAD, the appellant was not required to reimburse the benefits received because, under 7 C.F.R. § 780.17, the county committee's approval was not modified or appealed within 90 days and the appellant had not made any false statements or misrepresentations in the application. **In re Faircloth, NAD No. 95001774S, Sept. 8, 1995**. **Note**: This case was submitted by Frank Vann, counsel for appellant. The *Digest* welcomes submission of NAD or other unpublished decisions.

EMERGENCY LOANS. The appellant was a family farm corporation which applied for an emergency loan. The loan was denied by the county committee on the basis that the appellant had too much annual average income and too much labor costs in order to qualify as a family farm under 7 C.F.R. §§ 1941.4, 1945.162(i). On appeal to the NAD, the NAD held that Section 1941.4 had no income or labor cost limitations but only provided that the farm have enough income to sustain the family, pay debts and maintain the property. The regulations also require that the farm owners provide a substantial amount of the management and labor. The NAD ruled that the loan could not be denied on the basis of the amount of average annual labor costs. The NAD ruling was upheld by the Director of NAD. **In re James & Harry Holton, Inc., NAD No. 95000915S, July 3, 1995**. **Note**: This case was submitted by Frank Vann, counsel for appellant. The *Digest* welcomes submission of NAD or other unpublished cases.

GINSENG. The defendants were charged with violations of the Lacey Act, 16 U.S.C. § 3371, *et seq.*, for the purchase and exportation of ginseng without the certification and recordkeeping required by Ohio. Rev. Stat. § 1518.24. The defendants argued that the Lacey Act did not apply to ginseng because ginseng was exempt, under 16 U.S.C. § 3371(h), as a common food item. After examining various statutory and state and federal administrative definitions of food and medicine, the court held that ginseng was a food. The court also examined the incidence of references to ginseng in cases and publications and held that ginseng production and use were sufficiently widespread in the United States and the world to be a "common" food; therefore, ginseng was not a product governed by the Lacey Act and the charges against the defendants were to be dismissed. **United States v. McCullough, 891 F. Supp. 422 (N.D. Ohio 1995)**.

HERBICIDES. See *Welchert v. American Cyanamid, Inc., 59 F.3d 69 (8th Cir. 1995)* summarized under **Products Liaiblity**.

MARKETING ORDERS. The appellants were growers, handlers and processors of tree fruits in California. The appellants challenged the generic advertising program administered under the peach and nectarine marketing orders. The appellants argued that the assessment of fees to pay for the generic advertising was arbitrary and capricious because the USDA Secretary did not justify the need for the generic advertising compared to reliance on private and individual advertising. The court held that assessment was not arbitrary or capricious because the assessment rules were based on recommendations from producers and handlers and the annual assessments were similarly approved by a committee of affected producers and handlers. The appellants also argued that the fees violated their First Amendment rights in forcing the appellants to participate in the advertising campaigns. The court held that the USDA failed to demonstrate that the advertising program directly advanced a valid governmental interest or that the advertising program was narrowly tailored to advance the governmental interest; therefore, the assessments for the advertising program violated the appellants' First Amendment right to not be forced to financially contribute to the speech of others. The appellants also challenged the assessment regulations as promulgated without opportunity for notice and comment. The court cited *Cal-Almond, Inc. v. USDA, 14 F.3d 429 (9th Cir. 1993)*, which involved a similar assessment program and held that the assessments were validly made. The appellants also challenged the maturity and size standards as arbitrary and capricious but the court held that both sets of standards were supported by sufficient evidence considered by the USDA when the regulations were promulgated. **Wileman Bros. & Elliott, Inc. v. Espy, 58 F.3d 1367 (9th Cir. 1995)**.

RURAL HOUSING. The CFSA has adopted as final regulations temporarily increasing the maximum population of timber-dependent communities in the Pacific Northwest for eligibility for water and waste disposal loans and grants, community facilities loan, and local technical assistance and planning grants. 60 Fed. Reg. 46215 (Sept. 6, 1995).

SWINE. The defendants purchased live hogs from producers and sold the live hogs to slaughterhouses. The defendants were approached by the FDA after several hogs sold by the defendants were found to have excessive levels of sulfamethazine in their tissues after slaughter. The FDA requested that the defendants obtain written guarantees from the producers that the hogs did not contain excessive amounts of the sulfamethazine. The defendants failed to obtain the written guarantees and the FDA brought an action under 21 U.S.C. §§ 331(a), 332(a) for introduction of adulterated food into interstate commerce. The defendants argued that the live hogs were not food under the statutes. The court noted that the definition of "food" in 21 U.S.C. § 321(f) was the circular "food is food" and was very broad and the court examined the legislative history and the history of FDA practice to determine whether the inclusion of live hogs in the definition of food was reasonable. The court held that based on long standing practice of the FDA and the legislative history of a prior act, live hogs were food subject to 21 U.S.C. §§ 331(a), 332(a). The defendants also argued that they did not "introduce" the hogs into interstate commerce. The court held that the term "introduce into interstate commerce" included the purchase and resale of live hogs, because under Section 333(c)(2), persons who purchase food for resale have a defense to a Section 331 violation if they obtain a written guarantee from the seller of the food. **U.S. Tuente Livestock, 888 F. Supp. 1416 (S.D. Ohio 1995)**.

FEDERAL ESTATE AND GIFT TAX

GIFT-*ALM* § 6.01.* The taxpayer and spouse created an irrevocable trust with the taxpayer and spouse as income beneficiaries. The trust had two individuals and one foreign trust company as co-trustees. The trust provided the trustees with the discretion to distribute income and principal as the "trustees see fit" and granted the trustees authority to change all beneficial and administrative aspects of the trust, subject to a veto by the taxpayer or spouse. The taxpayer also had the power to make an inter vivos or testamentary appointment of the trust property to members of the taxpayer's family, except the taxpayer, the taxpayer's creditors or the taxpayer's estate. The IRS ruled that because the taxpayer had a limited power of appointment over the trust, the taxpayer had the power to change the beneficiaries of the trust; therefore, the taxpayer had sufficient dominion and control over the property of the trust to make the transfer of property to the trust an incomplete gift. The IRS also ruled that a completed gift would occur only when the taxpayer either relinquished the right to appoint any particular trust property or when the power was exercised. **Ltr. Rul. 9535007, May 3, 1995**.; **Ltr. Rul. 9536002, May 12, 1995**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent's estate included an IRA which listed the surviving spouse as primary beneficiary and a residuary trust as the remainder holder, with the surviving spouse as income beneficiary and trustee. The decedent's will allowed the surviving spouse as executor to split the residuary trust into several trusts in order to make the QTIP and reverse QTIP elections and to allocate property to a trust share for use of the GSTT exemption amount. The surviving spouse disclaimed the interest in the IRA as primary beneficiary and split the trust into several shares for purposes of making the QTIP and reverse QTIP elections. The trust required the trustee to request distribution of all IRA income annually and to make distribution of an amount equal to the IRA income to the surviving spouse. The IRS ruled that the disclaimer was effective and that the trust was eligible for the QTIP election. The IRS also ruled that the trustee could make a reverse QTIP election for a portion of the trust. The IRS also ruled that the division of the trust into separate subtrusts would not cause recognition of gain or loss to the trust or estate. **Ltr. Rul. 9537005, June 13, 1995**.

The decedent's spouse had previously died, leaving a residuary estate to a trust for the decedent. The trust provided for quarterly payments of all trust income plus so much of the trust corpus so that the decedent had at least $10,000 per year in distributions. The trust allowed the trustees to retain trust property "regardless of any lack of diversification, risk or non-productivity" and to invest and reinvest the trust corpus "without being limited by any statute or rule of law concerning investments by trustees." The spouse's estate originally claimed a marital deduction for the trust property as QTIP but filed an amended return after the death of the decedent which did not claim a marital deduction and paid additional tax. The decedent's estate excluded the trust property from the decedent's estate. The estates argued that the trust did not qualify as QTIP because the decedent's right to receive income was limited by the trustees' authority not to invest the property for the greatest income. The IRS cited Ill. Stat. ch 760, ¶ 5/3 which required fiduciaries to prudently manage and invest trust property, unless specifically excused by the trust instrument. The IRS ruled that the trust did not expressly excuse the trustees from the prudent investor rule; therefore, the decedent had the power to enforce the prudent investor rule against the trustees and to receive the maximum income from the trust. **Ltr. Rul. 9537004, June 13, 1995**.

SAVINGS BONDS. The decedent's estate included Series E and HH bonds and the decedent and estate used the cash method of accounting. The decedent and estate did not elect to report interest on the bonds each tax year. The decedent's will provided for bequests of partial interests in the residuary estate to four eleemosynary institutions. The estate representative elected to make cash distributions to three of the institutions and distribution of the bonds to the fourth. Under state law, the representative had the power to make distribution in kind or in cash as is most practicable and in the best interest of the distributees. The IRS ruled that the distribution of the bonds under the residuary bequests was not a disposition which caused recognition of the interest accrued on the bonds as income in respect of decedent, unless the estate makes the election, under I.R.C. § 454(a), to recognize the interest as income. Therefore, the accrued interest would not be recognized until the bonds were disposed of, redeemed or reach maturity or the legatee makes an election under I.R.C. § 454(a). **Ltr. Rul. 9537011, June 16, 1995**.

TRANSFERS OF STOCK. The taxpayer was a beneficiary of a trust initially established by the beneficiary's parent but funded with the beneficiary's separate property. The trustees were the other parent and a bank. The trustees had the power to distribute income and corpus of the trust. The beneficiary sold shares of stock to the trust in exchange for a promissory note with an interest rate adequate to not involve imputed interest under I.R.C. § 7872 and with the stock serving as security for the note. The IRS ruled that the trust was a grantor owned trust and that the taxpayer did not recognize gain or loss from the sale of the stock to the trust nor would the trust be entitled to any deduction from the interest paid on the note. The IRS also ruled that if the principal of the note equaled the fair market value of the stock, the sale of the stock did not result in a gift subject to gift tax. The IRS also ruled that the sale of the stock was not subject to the valuation rules of I.R.C. § 2702 so long as the promissory note was considered debt and not equity in the corporation. **Ltr. Rul. 9535026, May 31, 1995**.

FEDERAL INCOME TAXATION

C CORPORATIONS-*ALM* § 7.02.*

SHAREHOLDER LIABILITY. The taxpayer was the sole shareholder and director of a corporation which owed federal taxes. The shareholder caused the corporation to liquidate by causing the corporation to make a liquidating distribution to the shareholder and forgiving loans to the shareholder. The court held that the taxpayer was liable for the corporation's tax deficiency since the distribution caused the corporation to become insolvent and the loan forgiveness further depleted the corporation's assets. **Merriam v. Comm'r, T.C. Memo. 1995-432**.

CHARITABLE DEDUCTION. The taxpayer was an S corporation which was engaged in the business of growing and harvesting timber and subdividing and selling real estate. The taxpayer granted a conservation easement to some of its timberland to an organization described in I.R.C. § 170(b)(a)(A)(vi). The property was used in the taxpayer's business for logging but much of the property has been reforested or remained in its natural condition. The taxpayer had built two residences on the property, one for a caretaker and one used occasionally for business meetings. The easement allowed the taxpayer to continue to log some areas on a limited basis and in keeping with a forest management plan to preserve the flora and fauna of the area. The easement also allowed the taxpayer to raise crops and graze animals on a limited basis and to use the property for recreational hunting and fishing. Otherwise, the property was not to be developed, mined or transferred except as allowed under the easement agreement. The IRS ruled that the conservation easement was eligible for a charitable deduction because the easement was to be used exclusively for a conservation purpose. The IRS refused to rule on the issue of whether the property was held primarily for sale to customers in the ordinary course of business for purposes of calculating the amount of the charitable deduction. The IRS also ruled that any charitable deduction would be passed through to the shareholders. **Ltr. Rul. 9537018, June 20, 1995**.

DEPRECIATION-*ALM* § 4.03[4].* The taxpayer purchased a 17th century bass viol for use in the taxpayer's profession as a musician. The taxpayer claimed a depreciation deduction under ACRS. The IRS argued that the bass was not eligible for depreciation because the bass did not have a determinable life since the bass would only appreciate in value as an historical art object. The court held that the taxpayer was not required to prove a determinable useful life for the bass. The court held that the bass was eligible for ACRS depreciation because the bass was tangible property used in a trade or business and was subject to wear and tear from use during the taxable year. **Liddle v. Comm'r, 95-2 U.S. Tax Cas. (CCH) ¶ 50,488 (3d Cir. 1995), *aff'g*, 103 T.C. 285 (1994)**.

INDIANS. The taxpayer was an Eastern Band Cherokee who owned a beneficial interest in land on the Cherokee reservation. The taxpayer constructed an apartment complex on the land and rented the apartments to members of the Eastern Band Cherokee members. The taxpayer argued that the rental income from the apartments was not subject to federal income tax. The court held that only income derived from the exploitation or use of the land itself was nontaxable but the income derived from the improvements on the land were taxable. Thus, the court noted that the income from farming and timber harvesting were tax exempt but the income from shops, motels and gas stations were not exempt. The taxpayer also argued that the portion of the rent which was attributable to the land was nontaxable. The court held that the taxpayer failed to show that any portion of the rental income was derived specifically from the land; therefore, all of the rental income was taxable. The taxpayer also argued that the Fourteenth Amendment excluded American Indians from federal tax. The court held that the Fourteenth Amendment language referred to "Indians not taxed" in terms of counting Indians exempt from state taxes for purposes of apportionment for federal electoral representation. **Beck v. Comm'r, 95-2 U.S. Tax Cas. (CCH) ¶ 50,474 (4th Cir. 1995), *aff'g*, T.C. Memo. 1994-122**.

PENSION PLANS. For plans beginning in August 1995, the weighted average is 7.20 percent with the permissible range of 6.48 to 7.85 percent (90 to 109 percent permissable range) and 6.48 to 7.92 percent (90 to 110 percent permissable range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 95-48, I.R.B. 1995-36, 21**.

RETURNS. The IRS has announced the revision of Publication 926 which explains the tax rules for employers of domestic employees such as health aide, maid or nanny. **Ann. 95-73, I.R.B. 1995-37, 50**.

SAFE HARBOR INTEREST RATES
October 1995

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR 5.90	5.82	5.78	5.75	
110% AFR	6.50	6.40	6.35	6.32
120% AFR	7.10	6.98	6.92	6.88
		Mid-term		
AFR 6.31	6.21	6.16	6.13	
110% AFR	6.95	6.83	6.71	6.73
120% AFR	7.59	7.45	7.38	7.34
		Long-term		
AFR 6.77	6.66	6.61	6.57	
110% AFR	7.46	7.33	7.26	7.22
120% AFR	8.15	7.99	7.91	7.86

PRODUCTS LIABILITY

HERBICIDE-*ALM* § 1.02[4].* The plaintiffs were vegetable farmers who planted vegetables on fields which had been previously treated with a herbicide manufactureed by the defendant. The label on the herbicide claimed that vegetables could be planted on land treated with the herbicide 18 months before the planting. The plaintiffs sued for damages to their vegetable crops based on theories of express and implied warranties. The trial court ruled that the implied warranty action was preempted by FIFRA but that the express warranty action was not preempted. The appellate court reversed on the second holding. The court held that the express warranty action arose out of language on the label required under the FIFRA statute and EPA regulations; therefore, the action was preempted by FIFRA. **Welchert v. American Cyanamid, Inc., 59 F.3d 69 (8th Cir. 1995)**.

TRACTORS-*ALM* § 1.02[4].* The plaintiff was injured while hauling logs with a tractor manufactured by the defendant. The plaintiff sued in strict liability, alleging that the tractor was defective because it did not have an operator protective system (OPS) to prevent objects from entering the operator's area. The plaintiff presented evidence of the number of accidents involving tractor rollovers and the number of deaths and injuries involved. The plaintiff did not present any qualifying evidence that any of the other accidents involved tractors similar to the one involved in this case or that the type of accident was similar. The court held that the evidence was improperly allowed without sufficient evidence that the accidents were substantially similar to the plaintiff's accident. The allowance of the evidence of the prior accidents was sufficiently harmful to require a new trial. **Barker v. Deere & Co., 60 F.3d 158 (3d Cir. 1995)**.

SECURED TRANSACTIONS

PERFECTION. The debtor was a dairy farm partnership composed of two partners. The defendant supplied feed on credit to the farm and when the defendant learned that the debtor intended to sell its cows, the defendant obtained a security interest in the cows. Only one of the partners signed the security agreement in the partner's individual name. The plaintiff was another creditor with an unperfected security interest in the cows and argued that the defendant's security interest was not perfected because the agreement was not signed by both partners and was not signed by the one partner as a representative of the partnership. The court held that the evidence demonstrated that the signing partner had the authority to conduct partnership affairs and that the signature as an individual was sufficient to perfect the security agreement. The plaintiff also argued that the description of the collateral was defective because it did not identify the cows as belonging to the partnership. The security agreement did identify the type of collateral and its location on the farm; therefore, the court held that the description was sufficient. The plaintiff also argued that the identification of the debtor in the security agreement was defective because it listed only the names of the partners "dba Grey Dawn Farms." The court held that the description of the debtor was sufficient. The court warned that in all three aspects, the security agreement was not the model of draftsmanship and was barely sufficient to perfect the security agreement in this case. **Mountain Farm Credit Services v. Purina Mills, 459 S.E. 2d 75 (N.C. Ct. App. 1995)**.

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REPOSSESSION. The plaintiffs were farmers who had defaulted on federal farm loans from the FmHA (now CFSA). When the FmHA and other creditors attempted to foreclose on the plaintiffs' property, the plaintiffs filed for bankruptcy. The Bankruptcy Court lifted the automatic stay as to the FmHA and other secured creditors to allow them to repossess the collateral. The FmHA agents recovered some mixed pigs which were in poor health and sold them at a private sale to a local farmer because the next pig auction was a substantial distance away and weeks later. However, the plaintiffs did receive prior notice of the sale. The FmHA also sold the farm equipment at an auction about which the plaintiffs received prior written notice and actual notice through newspaper advertisements. The plaintiffs attended the auction and successfully bid on one piece of machinery. The plaintiffs sued the FmHA in tort under the Federal Tort Claims Act for violation of federal regulations and statutes in repossessing and selling the collateral without first informing the debtors of their loan deferral rights. The court held that any FmHA tort liability cannot be premised on violation of federal statutes or regulations but must be based on duties imposed by state law. The court held that the FmHA was entitled to repossess the collateral under the Bankruptcy Court order lifting the stay and had disposed of the collateral in a commercially reasonable manner with sufficient notice to the plaintiffs. **Love v. U.S., 60 F.3d 642 (9th Cir. 1995), *aff'g*, 844 F. Supp. 616 (D. Mont. 1994)**.

CITATION UPDATES

Estate of Ford v. Comm'r, 53 F.3d 924 (8th Cir. 1995) (valuation) see p. 92 *supra*.

Townsend v. U.S., 889 F. Supp. 369 (D. Neb. 1995) (transfers within three years of death) see p. 86 *supra*.

ISSUE INDEX